

**CITY OF TEMPE
DEVELOPMENT REVIEW COMMISSION**

**Meeting Date: 02/09/2021
Agenda Item: 4**

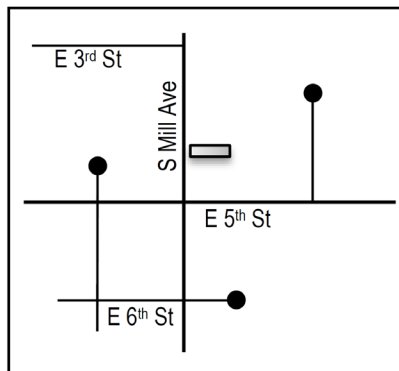
ACTION: Request a Use Permit to allow a tobacco retailer for **HIGH MAINTENANCE**, located at 411 South Mill Avenue, Suite 103.

FISCAL IMPACT: N/A

RECOMMENDATION: Staff – Approve, subject to conditions

BACKGROUND INFORMATION: HIGH MAINTENANCE (PL210009) is requesting a Use Permit to allow a tobacco retailer with a smoking lounge within the CC, City Center Zoning District. High Maintenance is currently in operation as a tobacco retailer at 405 South Mill Avenue and is relocating to the proposed location at 411 South Mill Avenue. The request includes the following:

ZUP210005 Use Permit to allow a tobacco retailer.



Property Owner
Applicant
Zoning District(s)
Suite Area
Vehicle Parking
Hours of Operation

Mill Alley Partners
Jason Horn, HMSS, LLC
CC, TOD
4,112 s.f.
No change in demand
9 am – 12 am (midnight), Daily

ATTACHMENTS: Development Project File

STAFF CONTACT(S): Dalton Guerra, Planner I (480) 350-8652

Department Director: Shelly Seyler, Community Development Director
Legal review by: N/A
Prepared by: Dalton, Guerra
Reviewed by: Steve Abrahamson, Principal Planner

COMMENTS

The proposed new location for High Maintenance is only three suites to the south of the existing business along the east side of Mill Avenue. This location conforms to Section 3-423, Use Separation Requirements, of the Zoning and Development Code (ZDC). The most recent use of the vacant suite was the Ra sushi bar and restaurant which consisted of seating areas, a bar, and an outdoor patio. The floor design of the new use will have retail space in the store front (along Mill) and a private smoking lounge in the rear of the suite. With the prior use of the suite being a restaurant, the parking demand will not increase with the new business being a retail store and smoking lounge.

The applicant has no plans to sell food or alcohol at this time, but further review and processing will be required in the future if food or alcohol will be sold. This does not include pre-packaged food and drinks that may be sold in the retail section of the suite. This request does not include live entertainment as part of the tobacco retail and smoking lounge use. Live entertainment will be reviewed and processed as a separate application from this request.

PUBLIC INPUT

To date, staff has not received public input.

POLICE INPUT

Tempe PD had concerns regarding the hours of operation, sale of food/alcohol, and live entertainment. These concerns will be addressed by the unique conditions of approval as stated in this report. These conditions will limit the hours of operation and require new Use Permit requests for food/alcohol sales and live entertainment.

USE PERMIT

The proposed use requires a Use Permit to operate a tobacco retailer within the CC, City Center zoning district.

Section 6-308 E Approval criteria for Use Permit (*in italics*):

1. *Any significant increase in vehicular or pedestrian traffic*; the proposed use of retail and lounge is not expected to significantly increase vehicular or pedestrian traffic more than the permitted adjacent uses along Mill Avenue.
2. *Nuisance arising from the emission of odor, dust, gas, noise, vibration, smoke, heat or glare at a level exceeding that of ambient conditions*; the business is conducted indoors and is not expected to create emissions exceeding the ambient conditions. However, the business will be required to adhere to all applicable smoking ordinances and statutory requirements as a condition of approval.
3. *Contribution to the deterioration of the neighborhood or to the downgrading of property values, which is in conflict with the goals, objectives or policies for rehabilitation, redevelopment or conservation as set forth in the city's adopted plans or General Plan*; the proposed use is permitted within the CC district subject to the provisions in Section 3-423 of the ZDC and approval of a Use Permit.
4. *Compatibility with existing surrounding structures and uses*; retail and lounge uses are consistent with the existing businesses along Mill Avenue. The suites directly adjacent to the proposed location include restaurants, bars, night clubs, and retail stores.
5. *Adequate control of disruptive behavior both inside and outside the premises which may create a nuisance to the surrounding area or general public*; the applicant plans to have security cameras in place as well as security guards when the business is expected to have large capacity.

REASONS FOR APPROVAL:

Based on the information provided by the applicant, the public input received and the above analysis staff supports approval of the requested Use Permit. This request meets the required criteria and will conform to the conditions.

SHOULD AN AFFIRMATIVE ACTION BE TAKEN ON THIS REQUEST, THE FOLLOWING NUMBERED CONDITIONS OF APPROVAL SHALL APPLY, BUT MAY BE AMENDED BY THE DECISION-MAKING BODY.

CONDITION(S) OF APPROVAL: (Non-standard conditions are identified in bold)

EACH NUMBERED ITEM IS A CONDITION OF APPROVAL. THE DECISION-MAKING BODY MAY MODIFY, DELETE OR ADD TO THESE CONDITIONS.

1. The Use Permit is valid only after a Building Permit has been obtained, the required inspections have been completed and a Final Inspection has been passed. As part of the Building Permit process, on-site storm water retention may be required to be verified or accomplished on this Site.
2. The Use Permit is valid for the plans as submitted within this application. Any additions or modifications may be submitted for review during the building plan check process.
3. **Consumption of tobacco and related products within the premises shall require the owner/management to adhere to the city Adopted International Mechanical Code. All permits and clearances required by the Building Safety Division shall be obtained prior to the Use Permit becoming effective.**
4. **Live entertainment requires a separate Use Permit.**
5. **An occupancy inspection and clearance from the Tempe Fire Department shall be obtained prior to the use permit becoming effective.**
6. **This use shall not violate the City of Tempe Smoke Ordinance or Smoke Free Arizona Act A.R.S. §36-601.01.**
7. **The owner/management shall prevent loitering related to the business along adjacent pedestrian walkways along Mill Avenue and to the rear of the property.**
8. **Hours of operation to begin no earlier than nine o'clock in the morning (9:00am) and end no later than twelve o'clock midnight (12:00am) daily.**

CODE/ORDINANCE REQUIREMENTS:

THE BULLETED ITEMS REFER TO EXISTING CODE OR ORDINANCES THAT PLANNING STAFF OBSERVES ARE PERTINENT TO THIS CASE. THE BULLET ITEMS ARE INCLUDED TO ALERT THE DESIGN TEAM AND ASSIST IN OBTAINING A BUILDING PERMIT AND ARE NOT AN EXHAUSTIVE LIST.

USE PERMIT:

- The Use Permit is valid for High Maintenance and may be transferable to successors in interest through an administrative review with the Community Development Director, or designee.
- The use permit approval shall be void if the use is not commenced or if an application for a building permit has not been submitted, whichever is applicable, within twelve (12) months after the use permit is granted or within the time stipulated by the decision-making body.
- The decision-making body, upon finding that the applicant has not taken corrective actions to resolve issues related to the permit/approval and that a continuation of the permit/approval is not in the interest of the public health, safety and general welfare, can revoke the permit/approval after providing written notice of its intentions to the holder of the permit.
- Specific requirements of the **Zoning and Development Code (ZDC)** are not listed as a condition of approval but will apply to any application. To avoid unnecessary review time and reduce the potential for multiple plan check submittals, become familiar with the ZDC. Access the ZDC through <http://www.tempe.gov/zoning> or purchase from Development Services.

- All business signs shall receive a Sign Permit. Contact sign staff at 480-350-8435.
- Any intensification or expansion of use shall require a new Use Permit.
- All required permits and clearances shall be obtained from the Audit and Licensing Division of the City of Tempe prior to the Use Permit becoming effective.
- All required Federal, State, County, and Municipal permits, licenses, and clearances shall be obtained, or the Use Permit is void.
- The gross sale of beverage and snack items may not exceed that of tobacco and hookah products for the hookah lounge tax license.

HISTORY & FACTS:

None pertinent to this case.

ZONING AND DEVELOPMENT CODE REFERENCE:

Section 3-202 Permitted Uses in Commercial and Mixed-Use Districts

Section 3-423 Use Separation Requirements

Section 6-308 Use Permit



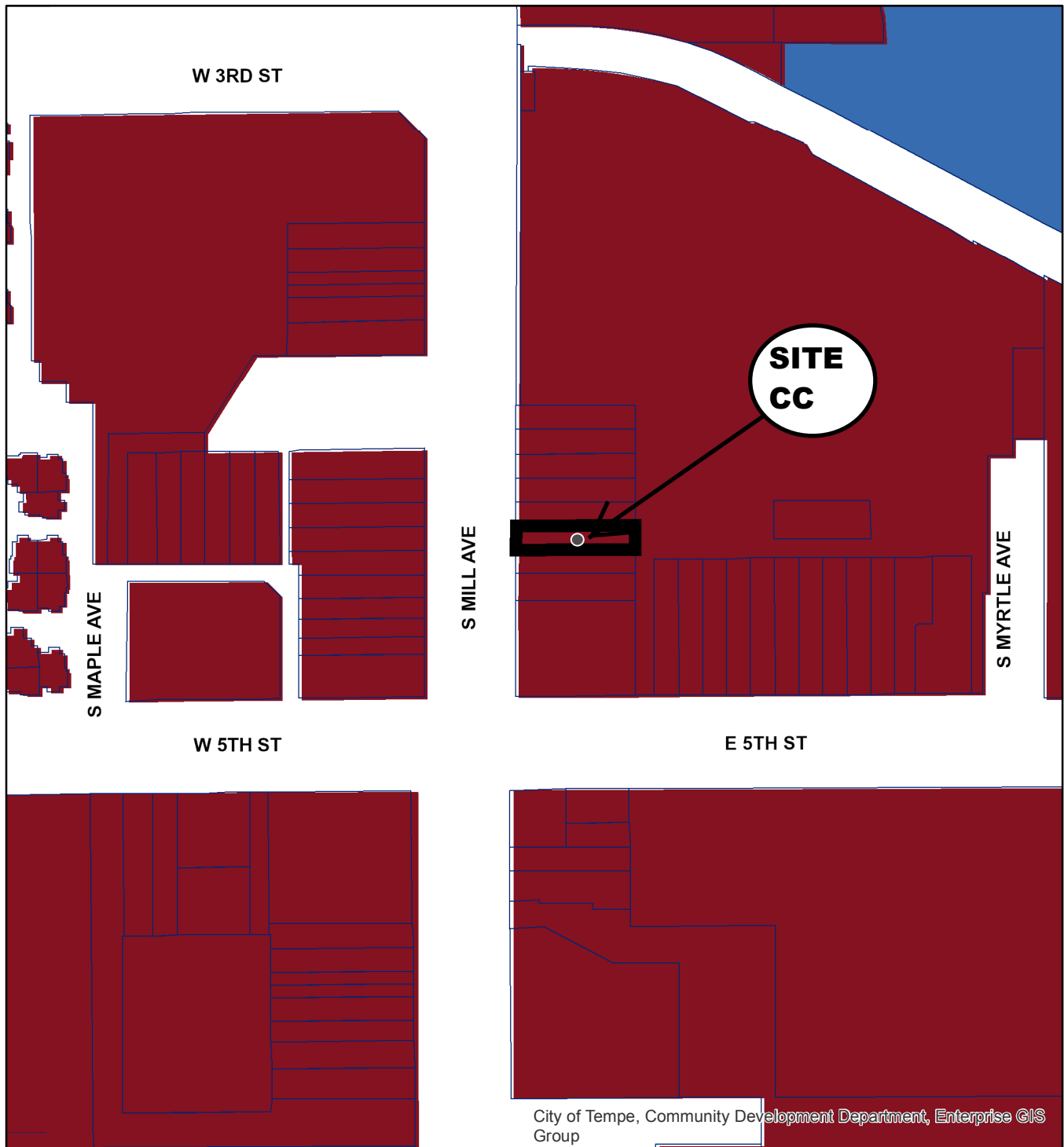
DEVELOPMENT PROJECT FILE
for
HIGH MAINTENANCE
(PL210009)



ATTACHMENTS:

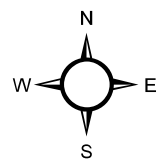
1. Location Map
2. Aerial
3. Letter of Explanation
4. Floor Plan
- 5-8. Context Photos

HIGH MAINTENANCE

PL210009



-  General Industrial District (GID)
-  City Center (CC)

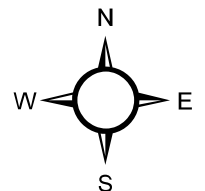


HIGH MAINTENANCE

PL210009



Aerial Map



Letter of Explanation

Thank you in advance for your time. My goal is to relocate my smoke shop to a suite in the same building. With doing so, it will give me the opportunity to continue to operate my smoke shop with the addition of a private smoke lounge.

The hours of operation will remain the same, every day between 9am and 12am. We would have an average of 10 employees. The current customer count is on average 2,000 walk-ins a week and we are expecting to maintain the traffic. With the new layout we are hoping to see an increase.

Currently my shop generates an estimated \$85K/yearly towards the City of Tempe in Sales Tax. In addition, we create funds for the City with our customers parking in paid meters, employee tax and local business fee's such as Tempe Police Alarm requirements. My shop has become a visitor attraction on Mill Avenue by housing a Million Dollar Glass Art Collection.

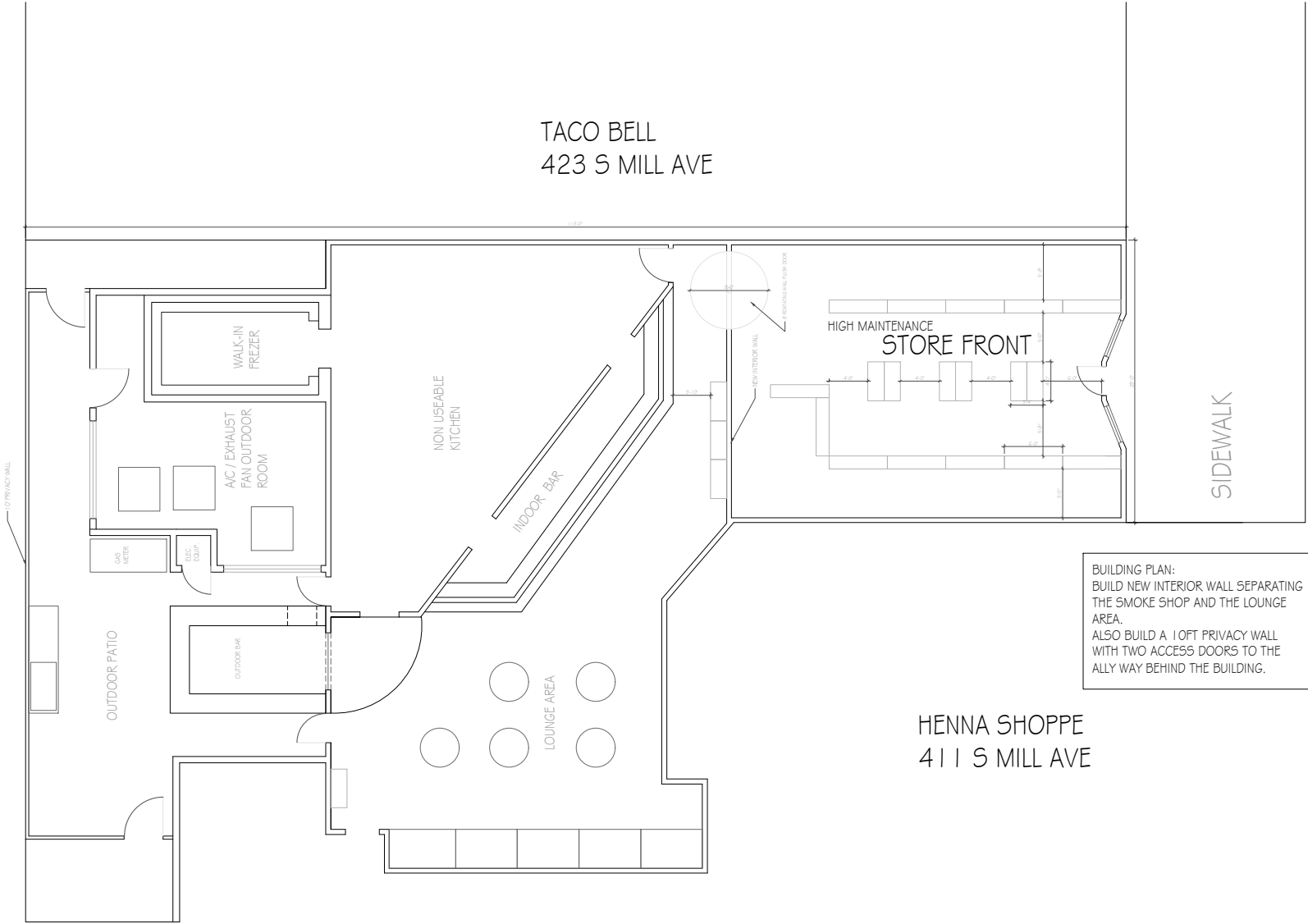
HIGH Maintenance Smoke Shop and Lounge will elevate traffic on Mill. We take pride in being on Mill Avenue and help watch after the streets, the guests and property of the City. We have worked with the local Authorities many times with our 15 Camera Security System. I believe we bring a positive experience to Mill Avenue and can say we've never had any break-ins, robberies or major incidences at our shop.

I have looked into the requirements of opening a Private Smoke Lounge. The suite will be split into two sections. The front of the suite, that is nearest Mill Avenue, will be the Retail Area that will operate as a Smoke Shop. The back section will host the Lounge. We will equip the entire suite with the proper ventilation to meet all requirements.

How we will contribute to the neighborhood is by offering jobs to the local citizens. We hire from with-in the city our locations 90% of the time. I live in Tempe and support local business over major corporations. Included in my lease is a NNN that will help maintain the building and help preserve a piece of Mill Avenue's History. I would like to cement myself and in 20+ years be considered a staple on the strip in a way that the Mill Avenue Book Store has done for me.

Currently we've coexisted with our neighbors for 5 years. We prefer to work with everyone on Mill Avenue. We run specials and have reached out directly to every business on Mill Avenue. The Smoke Shop is currently the only Tobacco Accessories Store on the strip. I believe that has helped my shop's growth as our neighbors highly recommend the store for different reasons from clothing, cigarettes to a place to kill time before their business opens. The Lounge will not interrupt any business around us as we will be excluded, private and out of sight.

To make sure we maintain adequate control of our business, staff, guests, customers, etc., we will hire professional security for all main events. Anytime the business reaches 30% capacity we will have security on site. We will also make sure to continue to work directly with Tempe Security and Tempe Police. We will maintain a professional atmosphere and comply to all laws.



	TITLE SITE PLAN		PROJECT HIGH MAINTENANCE SMOKE SHOP & LOUNGE		CLIENT JASON HORN	
	SHEET NO. 1	DATE 11/21	DRAWN BY AEL	COMPANY LAPAGLIA DESIGN	ARCHITECT ANTHONY LAPAGLIA (851) 852-3458	REV. 1
SCALE 1" = 10'	PROJECT NO. 420	PROJECT NAME 11/21	PROJECT ADDRESS 423 S MILL AVE	PROJECT PHONE (851) 852-3458	REV. 3 	REV. 4



Attachment 5



Attachment 6



Attachment 7



Attachment 8